IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	
James W. WARNER et al.	Group Art Unit: 2168
Serial No.: 10/656,800	Examiner: Morrison, Jay A.
Filed: September 5, 2003	Confirmation No. 7105
For: METHOD AND MECHANISM FOR HANDLING ARBITRARILY-SIZED XML IN SQL OPERATOR TREE	

NOTICE OF APPEAL &
REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Advisory Action mailed February 10, 2009, Applicants herein submit a Notice of Appeal pursuant to 37 C.F.R. § 41.31(a), and respectfully request for a pre-appeal brief conference.

Remarks begin on page 2 of this paper.

REMARKS

Claims 1-7, 11-20, and 23-43 are currently rejected under 35 U.S.C. 102(e) as allegedly being unpatentable over U.S. Patent No. 7,213,017 (Rys). Applicants respectfully submit that a pre-appeal brief conference is appropriate here because the prima facie case of a § 102 rejection has not been established, as summarized below. Also, Applicants note that the Advisory Action mailed on February 10, 2009 did not address any of the arguments presented in Applicants' last response. Thus, in the interest of saving both the resources of the Applicants and the Office, Applicants herein request for a pre-appeal brief conference before submitting an appeal brief.

A. Cited passages of Rys do not disclose or suggest an "operator" tree as described in the claims.

Claim 1 recites *an operator tree associated with a plurality of operators* that correspond with a program statement in a database query language (Emphasis Added). Claims 15 and 26-29 recite similar limitations. As discussed in Applicants' last response (see 1/26/09 response, pages 12-13), the cited passage (abstract) actually discloses generating a rowset in response to a query, and determining "nesting" for the rowset. To the extent that the "nesting" is analogized as the claimed operator tree, Applicant respectfully notes that such nesting comprises results of a query (because the rowset includes results generated for the query), and therefore, the nesting in Rys does not include any operator, nor can such nesting be considered an "operator tree" as recited in the claims. That Rys does not disclose or suggest an "operator tree" as described in the claims is further evidenced by the illustration in figure 4A, and the description in column 7, lines 8-10 and 28-30 of Rys, which describe a nesting that is formed from results (rowset) of a query. Thus, the nesting of Rys actually corresponds with a hierarchy of results for a query, and is not an "operator" tree associated with a plurality of *operators* that correspond with a program statement in a database query language, as recited in the claims.

B. Cited passages of Rys do not disclose or suggest outputting the result for a child node to a data stream without buffering the result or an intermediate result in storage when top-down processing is performed.

Claim 1 also recites outputting the result for a *child node* to a data stream without buffering the result or an intermediate result in storage when top-down processing is performed

(Emphasis Added). Claims 15 and 26-29 recite similar limitations. Thus, these claims describe that the result that is not buffered in storage is for *a child node/child operator node*. Rys also does not disclose or suggest these limitations. As discussed in Applicants' last response (see 1/26/09 response, pages 13-15), the cited passage (column 5, lines 38-42) of Rys discloses that XML data stream is an unbuffered data stream, but there is noting in the cited passage that discloses or suggests that a result for *a child node / child operator node* is not buffered in storage. Notably, the XML data stream in Rys is the final result that is output to client 203 (see figure 2 of Rys). Thus, the XML data stream in Rys is not a result for a child node / child operator node.

In addition, to the extent that any part of the nested tree in Rys is considered to be a result for a child node, Applicant further notes that such nested tree 309/310 is created and stored in the rowset processor (see figure 3), which is the opposite of what is described in the claims (reciting "without buffering the result or an intermediate result in storage"). For these additional reasons, claims 1, 15, and 26-29, and their respective dependent claims, are believed allowable over Rys.

C.   Cited passages of Rys do not disclose or suggest that top-down processing is considered to be capable of being performed when a result for the operator is capable of being generated without storage of the result for the parent operator node.

Claim 1 recites "determining if the child node relates to an operator for which top-down processing is capable of being performed, wherein the top-down processing is capable of being performed when a result for the operator is capable of being generated without storage of the result for the parent operator node." Claims 15 and 26-29 recite similar limitations. As discussed in Applicants' previous response (see 1/26/09 response, pages 15-17), the cited passages (column 7, lines 30-35 and 39-48) of Rys actually disclose adding entries to the deepest nesting level in some cases, and adding them to the top of the nesting in other cases. Thus, the cited passages merely describe the placement of items in a nesting, and do not disclose or suggest any order of processing. For the sake of argument, even assuming that the order of processing the entries in the nesting of Rys is presumed to be from top to bottom, such assumption would mean that there will be no need for performing the act of determining if a child node relates to an operator for which top-down processing is capable of being performed. This is because the entries in the nesting of Rys are all related, and if top-down processing is

presumed to be performed in Rys, then the recited act in the claims would be clearly unnecessary (and hence, not disclosed or suggested) in Rys.

In addition, according to page 13 of the Office Action, Rys inherently discloses that if there is nesting, then top-down processing can occur, which is allegedly all that the limitation requires. However, Applicant respectfully notes that claim 1 does not merely recite top-down processing, but it actually recites *the act of determining* if the child node relates to an operator for which top-down processing is capable of being performed. Applicant also respectfully notes that each claim element must be considered and given patentable weight, and therefore, the limitation regarding the *act of determining if* a child node relates to an operator cannot be ignored. In this case, there is nothing in Rys that discloses or suggests any *act of determining* if a child node relates to an operator, nor does Rys disclose or suggest any *act of determining* if a child node relates to an operator for which top-down processing is capable of being performed.

Also, Rys does not disclose or suggest that the first child operator node is eligible for the top-down processing *when a result for an operator associated with the first child operator node is capable of being generated without storage of the result for the parent operator node*. In particular, Rys says nothing about the condition when a child operator node is eligible for top-down processing – i.e., the condition being that a result for an operator associated with the first child operator node is capable of being generated without storage of the result for a parent operator node. Rather, column 5, lines 38-42 of Rys discloses that XML data stream is an unbuffered data stream. Such XML data stream is understood to be unbuffered regardless of whether entries are added to the bottom nested level (which the Examiner analogized as the top-down processing) or to the top nested level (see column 7, lines 37-48 of Rys). Therefore, to the extent that the Examiner maintains that Rys discloses a child operator node that is eligible for top-down processing, Applicant respectfully submits that Rys does not disclose or suggest that such eligibility *is conditioned upon* a result for an operator associated with the first child operator node that is capable of being generated without storage of the result for a parent operator node.

Also, with respect to claims 15, 28, and 29, Applicant notes that all the entries in Rys for the nesting levels are presumed to be related regardless of whether they are at the top or bottom of the nesting levels. Thus, to the extent that different entries for the nesting levels are

analogized as parent and child operators (which Applicant submits is improper because they are not operators, as discussed), Rys actually does not disclose or suggest *the act of determining whether* a parent operator node is related to a child node (note that the claims do not merely recite a parent operator node that is related to a child node, but they actually recite *the act of determining whether* such condition exists).

For these additional reasons, claims 1, 15, and 26-29, and their respective dependent claims, are believed allowable over Rys.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105,** referencing billing number **OID-2003-207-01**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105,** referencing billing number **OID-2003-207-01**.

Respectfully submitted,

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